



Dated: December 06, 2010

James M. Marlar
JAMES M. MARLAR
Chief Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 7
CHRISTOPHER J. LUNA and TANYA S.) No. 4:09-bk-17869-JMM
LUNA,) Adversary No. 4:09-ap-01451-JMM
Debtor(s).)
KURT KUMETAT,) MEMORANDUM DECISION
Plaintiff,)
vs.)
CHRISTOPHER J. LUNA and TANYA S.)
LUNA,)
Defendants.)

After trial, the court finds the facts as follows:

1. Defendants rented a home from Plaintiff on February 25, 2008 (Ex. B).
2. The lease called for one pet, a dog (Ex. B).
3. The Defendants vacated the premises on or about December 1, 2008 (Ex. C).
4. After the Defendants vacated, the Plaintiff/landlord re-tiled the home (it had been carpeted during the Defendants' occupancy). He also repainted and replaced a lamp and a faucet. He estimates these repairs to be \$8,563.82 (Ex. D).

- 1 5. Plaintiff maintains that the repairs were required due to the Defendants'
2 intentional destruction of the premises, and the inclusion of an
3 additional pet, a cat.

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5 **CONCLUSIONS OF LAW**

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7 In order for a court to find a non-dischargeable debt for intentional destruction of
8 premises, a plaintiff is required to prove its case by a preponderance of the evidence. *Grogan v.*
9 *Garner*, 498 U.S. 279, 111 S.Ct. 654 (1991).

10 In this case, the Plaintiff failed to meet that burden. While the Defendants may have
11 been slovenly, the court was unable to find conduct that their actions amounted to more than a
12 breach of the "reasonable wear and tear" provisions of the rental agreement. Damages for breaches
13 of contract are dischargeable. The court finds, from the evidence, that the disrepair from
14 Defendants' occupancy was not due to an intentional willful or malicious disregard for Plaintiff's
15 property rights, but rather from unclean lifestyle choices

16 The Supreme Court of the United States has decree that the term "willful" means that
17 the injury must be done with the deliberate intent to cause an injury to a claimant, not merely a
18 deliberate or intentional act that leads to an injury. *Kawaauhau v. Geiger*. 118 S.Ct. 974 (1998).
19 The Eighth Circuit Court of Appeals has held that "malice" refers to conduct more culpable than
20 recklessness. *In re Long*, 774 F.2d 875, 881 (8th Cir. 1985).

21 Here, while the Defendants were indeed poor tenants, their lifestyle choices did not
22 rise to the level of making their breach of contract debt non-dischargeable.

23 Accordingly, judgment will be entered dismissing Plaintiff's Complaint.

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25 DATED AND SIGNED ABOVE.

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1 COPIES to be sent by the Bankruptcy Notification
2 Center ("BNC") to the following:

3 Kurt Kumetat, Plaintiff

4 Paul D. Peterson, Attorney for Defendants

5 Gayle Eskay Mills, Trustee

6 Office of the U.S. Trustee

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